

**PETCAVICH, ROBERT J.**  
**Serial No. 10/633,207**  
November 7, 2007

**REMARKS**

Favorable reconsideration and allowance of this application are requested.

As a procedural note, the present amendment is being filed concurrently with a formal Request for Continued Examination (RCE) under 37 CFR §1.114. Accordingly withdrawal of the "finality" of the May 8, 2007 Official Action is in order so as to allow entry and consideration of the amendments and remarks presented herewith.

**I. Summary of Amendments**

By way of the amendment instructions above, the specification has been further revised so as to address certain typographical errors and informalities therein, some of which were helpfully identified by the Examiner.<sup>1</sup> In addition, the chemical names for the species of compounds originally disclosed by trade names, e.g., Triton™ X octylphenol ethoxylate surfactants have been retained in the specification, but reference to the generic class of such compounds has been removed.<sup>2</sup>

Independent claims 1 and 12 have been revised further to remove therefrom reference to polysorbate and to recite that the non-ionic surfactant which is selected from the group consisting of octylphenol ethoxylates and nonylphenol ethoxylates. Claim 3 has been canceled as redundant.

Therefore, following entry of this amendment, claims 1-2, 4-6 and 12 will remain pending herein for consideration.

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<sup>1</sup> The suggested change in tense of the verb "result" has not however been changed in paragraph [0029] as suggested by the Examiner since the plural verb tense is correct grammatically.

<sup>2</sup> As will be discussed in greater detail below, the inclusion of the generic expressions in the specification do not amount to "new matter" under 35 USC §132. However, in order to advance prosecution of this application to allowance, the specification and claims have been conformed to the species of non-ionic octylphenol and nonylphenol ethoxylates.

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## II. Response to Specification Objections

Applicants are quite frankly perplexed by the Examiner's assertion of "new matter" with respect to the prior specification amendments. In this regard, the Examiner asserts that:

"The [Applicants'] argument that no new matter has been introduced is not convincing as the applicant had a few examples of general surfactants in the original disclosure with no disclosure stating whether the examples or surfactants were ionic or anionic or cationic or non-ionic in nature...." (Official Action at page 2, last four lines thereof.)

Leaving aside for the moment what the Examiner means by "general surfactants", it is quite clear that the applicants disclosed various surfactants generally by trade names, namely, Triton™ X and Tergitol™ surfactants. In addition, applicants disclosed numerous *specific* surfactants belonging to Triton™ X surfactants, namely Triton™ X-45, -15, -35, -45, -100, -102, -114, -165, -305, -405, and -505 (see paragraph [0027]).

Applicants submitted as an attachment to the Applicants' prior amendment evidence that the Triton™ X series of surfactants are nonionic octylphenol ethoxylates.<sup>3</sup> In this regard, the hard copy of the evidence presented regarding the Triton™ X series of surfactants itself proclaims that "Triton™ X Series surfactants are versatile **nonionic** surfactants...." And the title of such evidence states unequivocally: OCTYLPEHNOL ETHOXYLATES.

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<sup>3</sup> The USPTO PAIR system confirms that such evidence was in fact received by the Office and is present in the Official Record. Accordingly, duplicate copies of such evidence has not been submitted so as to prevent overburdening of the record.

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Thus, the disclosure of numerous species of non-ionic surfactants via disclosure of a large number of Triton™ X series of surfactants precludes the Examiner from taking a position that reference to non-ionic surfactants amounts to “new matter”. It simply does not. Accordingly withdrawal of the objection to the specification advanced under 35 USC §132 is in order.

### **III. Response to Rejection Advanced Under 35 USC §112, First Paragraph**

The comments above are equally germane to the rejections advanced by the Examiner under 35 USC §112, first paragraph. Specifically, the Examiner seems to have entirely ignored the evidence presented with the applicants prior amendment that Triton™ X series of surfactants are in fact “octylphenol ethoxylates” and that Tergitol™ surfactants are in fact “nonylphenol surfactants”. Thus, by disclosing the trade names, applicants have in fact disclosed originally what the compounds are. Thus, no issue under 35 USC §112, first paragraph is in fact presented by the applicants’ claims. Withdrawal of such rejection is in order.

### **IV. Response to Rejection Advanced Under 35 USC §112, Second Paragraph**

The objected to phrase “exterior surface” has been deleted from the claims in order to advance prosecution. However, applicants note that the exterior surface was intended to be read in its normal dictionary sense, i.e., exterior means exterior. In any event, the Examiner’s apparent dislike for such a term has been mooted by its cancellation.

The objected-to term “effective amount” has been deleted from claim 12.

Withdrawal of the rejection advanced under 35 USC §112, second paragraph is therefore in order.

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## **V. Response to Art-Based Issues**

The Examiner persists in his rejection of claims 1-2 under 35 USC §102(b) as allegedly being anticipated by Scott et al (USP 2,872,325). Applicants suggest that the pending claims herein are not anticipated by Scott et al. The incorporation of the subject matter of claim 3 to define the surfactant as either an octylphenol ethoxylate or a nonylphenol ethoxylate renders moot such rejection.

Claims 1-3 and 12 also attracted a rejection under 35 USC §103(a) as allegedly unpatentable over Scott et al in view of Nisperos Carriedo et al. In response, applicants note that the secondary reference to Nisperos Carriedo et al does not disclose or suggest an octylphenol ethoxylate or a nonylphenol ethoxylate surfactant be employed together with an PVC copolymer in an aqueous emulsion of the same for use as a coating to preserve fresh fruit. Accordingly, the presently pending claims cannot be rendered “obvious” based on such references.

Yang et al has been applied with the combination of Scott et al and Nisperos Carriedo et al to reject prior claims 4 and 6. However, Yang et al fails to cure the deficiencies of such references as discussed above. Thus, Yang et al does not disclose or suggest an octylphenol ethoxylate or a nonylphenol ethoxylate surfactant be employed together with an PVC copolymer in an aqueous emulsion of the same for use as a coating to preserve fresh fruit. Therefore, withdrawal of this rejection is also in order.

Similarly the combination of Bice with Scott and Nisperos Carriedo et al is deficient to reject the claims under 35 USC §103(a). That is, Bice does not disclose or suggest at all an octylphenol ethoxylate or a nonylphenol ethoxylate surfactant be employed together with an PVC copolymer in an aqueous emulsion of the same for use as a coating to preserve fresh fruit.

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Withdrawal of all art-based rejections is therefore in order.

## **VI. Conclusions**

Every effort has been made to advance prosecution of this application to allowance. Therefore, in view of the amendments and remarks above, applicants suggest that all claims are in condition for allowance and Official Notice of the same is solicited.

Should any small matters remain outstanding, the Examiner is encouraged to telephone the Applicants' undersigned attorney so that the same may be resolved without the need for an additional written action and reply.

An early and favorable reply on the merits is awaited.

## **4. Fee Authorization**

The Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Account No. 14-1140.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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